IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1874 OF 2005

WITH

CIVIL APPLICATION NO.4490 OF 2005

R.K. Enterprises ..Appellant.

Vs.

Employees State Insurance

Corporation ..Respondent.

....

Mr.Anil Subramaniam for the Appellant.

Mr.H.V.Mehta for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

8th December, 2005.

P.C. :

This appeal arises out of an order passed by the Employees State Insurance Court at Pune dated 17th August, 2005. The Appellant had challenged before that Court an order passed by the Employees State Insurance Corporation on 14th March, 2000 under Section 45-A of the E.S.I. Act claiming contribution of Rs.3,93,885/- and interest

of Rs.76,267/- for the period from April to July 1996, September to December 1996, January to March 1997 and February to September 1999. The grievance of the Appellant is that between the period April 1997 to September 1999 the business was absolutely at a stand still and that there was no activity carried on. Similarly, it has been urged that there was no employee for the aforesaid period. An adverse inference was drawn against the Appellant for having not produced the books of account, muster rolls and wage registers. On behalf of the Appellant it has been submitted that the Appellant even now is ready and willing to produce all the relevant material in his custody and that he should be given an opportunity of proving his case particularly since a substantial part of the amount has already been deposited.

It is common ground that the Appellant has deposited an amount of Rs.1 lac before the Trial Court, a further amount of Rs.2 lacs in pursuance of the interim order dated 11th October, 2005 and an amount of Rs.21,762/- by way of contribution during the relevant period. Mr.Mehta, learned counsel appearing for the E.S.I. Corporation

states that an amount approximately of Rs.90,000/- is due and payable by the Appellant even now which is exclusive of interest for the subsequent period. In my view, having regard to the fact that the Appellant has deposited a substantial part of the amount, the ends of justice would be served if the Appellant is directed to deposit an amount of Rs.75,000/- within a period of four weeks from today. Conditional on the aforesaid amount being deposited, the order of the Assistant Director dated 14th March, 2000 and of the E.S.I. Court dated 17th August, 2005 shall stand set aside and the show cause notice dated 3rd December, 1999 shall stand restored for reconsideration after furnishing to the Appellant an opportunity of being heard. In the event that the Appellant fails to do so, the order of the E.S.I. Court shall stand confirmed. Upon making the aforesaid deposit, the Appellant shall also produce the original record of the staff in respect of whom the contribution has been paid together with all other documents in his custody including wage registers, muster rolls and the books of account. The First Appeal is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

In view of the disposal of the First Appeal, the Civil Application is rendered infructuous and is accordingly disposed of.